

## REMARKS

In the Office Action mailed April 12, 2007, the Examiner only noted that claims 1-12 are pending in this Application. In fact, claims 1-13 were filed with the Application and are believed to be still pending in this Application.

Claims 3, 5, 7 and 9 have been amended to overcome the objections based on 37 CFR 1.75(c). Those objections are now deemed to be moot.

Claims 1-12, and presumably 13, have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,942,153 and 5,942,498 in view of Japanese Patent No. 08231369; or over Japanese Patent No. 08231369 in view of U.S. Patent Nos. 4,942,153 and 5,942,498. For the reasons that follow, Applicant traverses these grounds for rejecting the claims of the present Application.

The present invention is directed to a skin care cosmetic kit comprising a dermatological water vaporizer, and a viscoelastic gel aqueous formulation comprising a hyaluronic acid salt (HA) at a concentration of 1.0 to 3.5% w/v for topical application on the skin surface after application of the water droplets. In the skin care cosmetic kit and regime according to the present invention, as claimed, the HA viscoelastic gel has a relatively high concentration of HA, and has the advantageous property of capturing small water particles spread onto the skin by the vaporizer, which enables the HA to form a thin and uniform film that binds well to the surface of the skin where it has been applied. An important advantage of the skin care cosmetic kit and regime according to the present invention is that the thin and uniform film of HA formed on the skin surface has excellent skin moisturising and water retention properties without blocking the diffusion of skin metabolites and nutrients. The HA film provided by the cosmetic

kit and regime of the present invention has an increased residence time on the skin, which provides effective long term hydration and skin softening properties. Furthermore, the HA film produced by the cosmetic kit and regime of the present invention is a particularly effective thermal barrier, and acts to reduce effects such as skin reddening and other skin reactions in skin that is sensitive or allergic to a cold environment.

U.S. Patent No. 4,942,153 is directed to a spray-formulation comprising collagen and deionised water. U.S. Patent No. 4,942,153 specifically teaches that the disclosed pre-formulated collagen-deionised water spray composition avoids the use of moisturizing creams or topical ointments or lotions, which it describes as being “expensive” and “messy.” According to U.S. Patent No. 4,942,153, it is particularly advantageous that the spray composition does not require any rubbing in, or a sink, mirror, bathroom, etc., for its application (see column 3, lines 21-32 and column 5, lines 13-20). Indeed, it is a particular aim of U.S. Patent No. 4,942,153 to provide a moisturizing composition that is applied solely by the spraying of the pre-formulated composition directly onto the skin. U.S. Patent No. 4,942,153 clearly teaches away from the use of any cosmetic kit or cosmetic regime that involves the use of a cream, ointment, lotion or gel formulation. According to U.S. Patent No. 4,942,153, it is essential that the formulation is a single pre-formulated spray formulation. Further, U.S. Patent No. 4,942,153 is concerned only with sprayable aqueous formulations containing collagen. There is no mention whatsoever anywhere within U.S. Patent No. 4,942,153 of a hyaluronic salt.

U.S. Patent No. 5,942,498 teaches a combination therapy, namely a pharmaceutical topical composition comprising a drug that inhibits prostaglandin synthesis, particularly a NSAID, and hyaluronic acid, or a salt thereof. According to U.S. Patent No. 5,942,498, the hyaluronic acid is used for the transport of the drug to the site of pathology and/or trauma.

According to U.S. Patent No. 5,942,498, the hyaluronic acid facilitates the transport of the drug, e.g., a NSAID, to the epidermis, and the pharmaceutical composition subsequently clears to the lymphatic system and is available for the treatment of diseases via the lymphatic system. U.S. Patent No. 5,942,498 describes pharmaceutical formulations comprising a NSAID and hyaluronic acid, or salt thereof, in the form of a lotion, cream or gel for topical administration, in sterile water. The disclosed formulations comprising a combination of NSAID and HA are for pharmaceutical application and U.S. Patent No. 5,942,498 lists a number of diseases or traumas that may be treated with the formulation described therein such as basal cell carcinoma, melanoma and malignancies or tumors in the skin (see column 7, line 56 to column 8, line 1). The compositions described are not considered for cosmetic applications, and there is no consideration whatsoever of the water retention properties or skin moisturizing properties of the pharmaceutical compositions described.

Japanese Patent No. 08231369 is directed to the replacement of deionised water in conventional topical cosmetic formulations (in the form of creams, lotions, body shampoos) with natural mineral water, in particular natural mineral water from certain locations in Japan. The cream/lotion type cosmetic formulations taught by Japanese Patent No. 08231369 contain  $\geq 10$  wt% natural mineral water and a moisture-retention component to be selected from a list including polyhydric alcohol, muco polysaccharides, natural moisture-retention factors (i.e. amino acids or lactic acid salts selected from pyrrolidone carboxylic acid salt, serine, glycine and alamine) and a cyclodextrin derivative. The cosmetic compositions taught by Japanese Patent No. 08231369 are in the form of creams, lotions or body shampoos and there is no description of any gel type cosmetic formulation. Further, there is no description whatsoever of a cosmetic viscoelastic gel formulation containing 1.0 to 3.5% w/v hyaluronic acid salt.

With respect to the Examiner's argument that it would have been obvious for a person ordinary skilled in the art to include HA and mineral water of the Japanese patent document in the spray composition described by the U.S. Patent No. 4,942,153, it is respectfully submitted that U.S. Patent No. 4,942,153 specifically teaches the use of a spray composition comprising collagen and deionised water. According to U.S. Patent No. 4,942,153, deionised water should be used in order to avoid any minerals or contaminants reaching the skin. Accordingly, the skilled person reading U.S. Patent No. 4,942,153 is taught against using mineral water in the spray compositions therein described, and therefore would not consider the formulations of Japanese Patent No. 08231369, as these specifically comprise mineral water as an essential component.

Concerning the U.S. Patent No. 5,942,498 citation, it is noted that this patent document describes pharmaceutical formulations containing a drug, particularly an NSAID, and hyaluronic acid for the treatment of certain pathologies and/or traumas. These drug containing formulations of U.S. Patent No. 5,942,498 are pharmaceutical formulations for medical applications and are not suitable for cosmetic application, and would therefore not be considered by the skilled person in the cosmetic art.

Even if the skilled person was inventively to include a formulation according to Japanese Patent No. 08231369 in the spray composition of U.S. Patent No. 4,942,153, he would not arrive at the presently claimed invention, either. The present invention, as claimed, is directed to a skin care cosmetic kit and regime comprising a dermatological water vaporizer and a separate viscoelastic gel formulation comprising 1.0 to 3.5% w/v hyaluronic acid salt. The present invention is not a pre-formulated spray composition comprising water and hyaluronic

acid. Further, it is noted that Japanese Patent No. 08231369 does not describe any viscoelastic gel cosmetic formulation comprising 1.0 to 3.5% w/v HA.

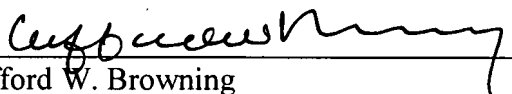
Additionally, with respect to the Examiner's alternative argument that it would have been obvious to apply as a spray the composition of Japanese Patent No. 08231369 containing mineral water and HA, it is further noted that the formulation of Japanese Patent No. 08231369 are creams or lotions and are therefore not suitable for applying as a spray in view of their physical properties. Most importantly, it is again highlighted that the present invention as claimed is not a spray composition containing HA.

Finally, with respect to the Examiner's argument that it would have been obvious from the teachings of U.S. Patent No. 4,942,153 and Japanese Patent No. 08231369 to use a separate vaporizer and HA gel, it is respectfully submitted that U.S. Patent No. 4,942,153 teaches a pre-formulated spray composition comprising a collagen, and specifically teaches against the use of any cream or ointment topical cosmetic formulation (column, 3, lines 21-26, column 5, lines 1-4 and lines 15-20). Therefore, a skilled person reading U.S. Patent No. 4,942,153 would only consider providing a pre-formulated spray composition and would not even contemplate a skin care kit or regime using a spray followed by application of a cream, gel, lotion of any form. Further, it is also noted that the spray in U.S. Patent No. 4,942,153 is not simply a dermatological water vaporizer according to the present invention, but is a spray of a pre-formulated solution composition comprising collagen.

It is finally noted that none of the cited prior art documents teach a viscoelastic gel formulation comprising a hyaluronic acid salt at a concentration of 1.0 to 3.5% w/v suitable for skin care cosmetic use.

Accordingly, it is respectfully submitted that none of the cited prior art documents, either alone or in any combination, render obvious to a person of ordinary skill a skin care cosmetic kit or regime according to the presently claimed invention, comprising a dermatological water vaporizer and a visco-elastic gel formulation comprising hyaluronic acid salt at the concentration of 1.0 to 3.5% w/v for topical application to the skin after the application of water droplets. There is no suggestion whatsoever in the cited prior art that such a skin care cosmetic kit or regime would obtain the above-described advantages of the skin care cosmetic kit and regime of the present invention. The Examiner's claim rejections under 35 U.S.C. § 103(a) are accordingly respectfully traversed.

Respectfully submitted,

By:   
Clifford W. Browning  
Reg. No. 32,201  
Krieg DeVault LLP  
One Indiana Square  
Suite 2800  
Indianapolis, IN 46204  
(317) 636-4341